



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/699,921

11/03/2003

Dennis M. Treu

T4342-14521US01

3896

181 7590 06/10/2009

MILES & STOCKBRIDGE PC  
1751 PINNACLE DRIVE  
SUITE 500  
MCLEAN, VA 22102-3833

EXAMINER

WIEST, PHILIP R

ART UNIT

PAPER NUMBER

3761

NOTIFICATION DATE

DELIVERY MODE

06/10/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ipdocketing@milesstockbridge.com  
sstiles@milesstockbridge.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/699,921	<b>Applicant(s)</b> TREU, DENNIS M.	
	<b>Examiner</b> Phil Wiest	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 March 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 81-111 is/are pending in the application.
- 4a) Of the above claim(s) 100, 103 and 104 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 81-99, 101, 102 and 105-111 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/9/09 has been entered.

### ***Response to Amendment***

In the reply filed 3/9/09, applicant cancelled claims 19-80 and added new claims 81-111. Claims 81-111 are currently pending, and claims 103-104 are withdrawn from consideration, as discussed below.

### ***Election/Restrictions***

1. Newly submitted claims 100, 103, and 104 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 103 and 104 are drawn to the use of an RF transmitter without a corresponding receiver to produce a one-way signal, and Claim 100 is drawn to the use of a transmit-only device and receive-only device that are connected by a standard communication link. The previously presented claims were drawn to a system that uses an *opto-isolator* to prevent two-way data transmission. Since applicant has received an action on the merits for the originally presented invention, this invention has been

Art Unit: 3761

constructively elected by original presentation for prosecution on the merits.

Accordingly, claims 100, 103, and 104 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Furthermore, applicant argues that the restriction of claims 103 and 104 is improper because they encompass the previously elected medical treatment device. This argument has not been found persuasive. *After the restriction requirement* mailed 7/5/06, applicant added new claims drawn to a species wherein an opto-isolator is used to prevent communication. Applicant did not file claims drawn to the species wherein an RF transmitter is used until later in prosecution. Opto-isolators and RF transmitters are distinct means for allowing one-way communication. Because applicant first claimed the use of opto-isolators, the withdrawal of claims 103 and 104 stands.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 81-83, 85-99, 101, 102, 105-107, and 109 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fletcher-Hayner et al. (US 2001/0034614) in view of Tsoglin et al. (US 5,469,859). Fletcher-Haynes et al. (hereafter 'Fletcher-Haynes')

Art Unit: 3761

teaches a medical treatment system comprising a treatment unit 10 configured to administer a medical treatment to a patient, the treatment unit comprising user-accessible controls (touchscreen input/output device 199; see Figure 1A) configured to permit administration of the medical treatment and indicators configured to show status information related to the treatment. The treatment unit has its own controller and is capable of operating on its own. The system further comprises a programmable monitor unit 140 having a graphical display 200 and at least one control configured to permit the selection of information shown on the display. The monitor unit is configured to output a variety of types of data related to the status of the medical treatment. Fletcher-Haynes further teaches that an isolation device may be used for protecting communications between the devices [0066].

Fletcher-Haynes, however, does not specifically teach that the treatment unit and monitor unit are disposed adjacent one another, nor does Fletcher-Haynes specifically teach the use of a one-way communication mechanism that prevents the monitor unit from sending signals to the treatment unit at all times.

Regarding Fletcher-Haynes' failure to teach that the treatment and monitor units are disposed in the same housing, the mere integration of a plurality of components does not constitute a patentable improvement in the art because doing so does not provide any novel functional advantages over the device taught by Fletcher-Haynes (See MPEP § 2144.04, V., B.). It is the examiner's opinion that one of ordinary skill in the art would have had the foresight to integrate the monitor and treatment unit into a common housing, such that the controls of both devices would be simultaneously

Art Unit: 3761

accessible. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the treatment and monitoring system McGrath to make the treatment unit and monitoring unit part of the same integral housing in order to make both units accessible to the same user in a single location.

Regarding Fletcher-Haynes' failure to teach a one-way communication channel, Tsoglin et al. (hereafter Tsoglin) teaches a device for determining cardiorespiratory parameters in the human body, comprising a measuring unit 12 having a plurality of sensors 11, and a monitor unit 15 for monitoring information conveyed from the sensors. Data is transmitted through a one-way communication channel 14 from the measuring unit to the monitoring unit. The one-way communication channel is established by using an opto-isolator (Column 12, Lines 11-27). It is well known in the art that it is possible for monitor units to fail or transmit random voltages during use. Therefore, those of skill in the art utilize opto-isolators to provide electrical protection from random voltages that can affect a remote station (treatment unit, measuring unit, etc.) or harm the patient. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the medical treatment system of Fletcher-Haynes with Tsoglin's one-way communication channel (such as an opto-isolator) between a monitor unit and remote station, because doing so will provide electrical protection to the patient in the event of a random voltage.

3. Claims 84, 108, 110, and 111 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fletcher-Haynes in view of Tsoglin, and further in view of Kleinekofort

Art Unit: 3761

(US 6,827,698). Fletcher-Haynes and Tsoglin reasonable suggest the device substantially as claimed, but do not specifically teach that the treatment device is a dialysis machine having a plurality of sensors. Kleinekofort teaches a dialysis system comprising a blood flow path and a dialysis fluid flow path, wherein sensors (20,22) are disposed on the blood flow path 2 (see Figure 1). Blood flow data from the sensors is communicated to a monitor system having a display and a control unit (i.e. treatment unit) such that the data can be used by the control unit to control blood flow rate through the system. The disclosures of Fletcher-Haynes and Tsoglin are mostly drawn to methods for operating a medical control system, and one of ordinary skill in the art would have recognized that this system may be used to operate a variety of medical devices, not only apheresis machines. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the medical treatment device of Fletcher-Haynes and Tsoglin to be used to control the dialysis system of Kleinekofort, because doing so would allow a one-way communication system to be used to control a dialysis system. *One of ordinary skill in the art would have expected a certain degree of success when modifying the device of Fletcher-Haynes and Tsoglin to work with a dialysis system instead of an apheresis system.*

### ***Response to Arguments***

4. Applicant's arguments with respect to claims 19-80 have been considered but are moot in view of the new ground(s) of rejection.

Art Unit: 3761

Additionally, when making non-drastic changes to the claims, the examiner respectfully requests that applicant **amend** existing claims rather than cancelling them and filing new ones. Claims 81-111 are very similar to cancelled claims 19-80 (especially the independent claims), and prosecution would be simplified and expedited if the order and primary structure of the claims remains intact.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phil Wiest whose telephone number is (571)272-3235. The examiner can normally be reached on 8:30am-5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Phil Wiest/  
Examiner, Art Unit 3761

/Leslie R. Deak/  
Primary Examiner, Art Unit 3761  
8 June 2009